

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 04-00298-01-CR-W-GAF
)	
JOHN P. STREET,)	
)	
Defendant.)	

ORDER

Now pending before the Court is defendant John P. Street's Request that the Court Find Unconstitutional the Provision of the Federal Death Penalty Act Allowing the Government to Present "Information" and Not Follow the Federal Rules of Evidence During Penalty Phase Proceedings (Doc. #51). Defendant argues that the Court should declare the Federal Death Penalty Act, specifically that portion of 18 U.S.C. § 3593(c) which permits the government, during the penalty phase of a federal capital case, to present information rather than evidence and further permits the government to not follow the Federal Rules of Evidence in presenting its case in support of its request for the death penalty unconstitutional for reasons set forth in his motion.

On December 22, 2005, United States Magistrate Judge Sarah W. Hays issued her Report and Recommendation. On January 2, 2006, defendant filed his objections to the Report and Recommendation.

Upon careful and independent review of the pending motion, defendant's objections to the Magistrate's Report and Recommendation, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States

Magistrate Judge Sarah W. Hays.

Accordingly, it is hereby ORDERED defendant John P. Street's Request that the Court Find Unconstitutional the Provision of the Federal Death Penalty Act Allowing the Government to Present "Information" and Not Follow the Federal Rules of Evidence During Penalty Phase Proceedings (Doc. #51) is OVERRULED and DENIED.

SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: January 3, 2006